R.D. # 11-10
Maplewood, NJ

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 22

IDL TECHNI EDGE, LLC [1] Employer and	**CASE 22-RC-13185**
LOCAL 108, RETAIL, WHOLESALE AND DEPARTMENT STORE UNION A/W UNITED FOOD AND COMMERCIAL WORKERS Petitioner	

DECISION AND DIRECTION OF ELECTION

The Petitioner, Local 108, Retail, Wholesale and Department Store Union, a/w United Food and Commercial Workers, filed a petition under Section 9(c) of the National Labor Relations Act seeking to represent a unit of approximately 55 employees consisting of all full-time and regular part-time production employees, maintenance employees, shipping and receiving employees, drivers and leads employed by the Employer at its Maplewood, New Jersey facility, excluding office clerical employees, temporary employees, professional employees, guards and supervisors, as defined in the Act. The Employer contends that the scope of the unit sought by Petitioner is inappropriate because it does not include the additional nine employees employed by it at

[1] The name of the Employer appears as amended at the hearing.

its Little Ferry, New Jersey, facility. It also asserts that, in any event, the petition should be dismissed because of its planned consolidation of these two facilities into a facility in Kenilworth, New Jersey. I have considered the evidence and the arguments presented by the parties. I find, for the reasons discussed *infra*, that the petitioned-for unit is an appropriate unit in scope and that the petition should not be dismissed because of the planned consolidation of operations. Accordingly, I will order an election therein.

Under Section 3(b) of the Act, I have authority to hear and decide this matter on behalf of the National Labor Relations Board. Upon the entire record in this proceeding,[2] I find:

1. The hearing officer's rulings made at the hearing are free from prejudicial error and hereby affirmed;
2. The Employer is engaged in commerce within the meaning of the Act and it will effectuate the purposes of the Act to assert jurisdiction herein;[3]
3. The labor organization involved claims to represent certain employees of the Employer;[4]
4. A question affecting commerce exists concerning the representation of certain employees of the Employer within the meaning of Section 9(c)(1) and Section 2(6) and 2(7) of the Act;[5]

[2] Briefs filed by the parties have been duly considered.
[3] The parties stipulated, and I find, that the Employer is a Delaware limited liability corporation engaged in the manufacture of knives, blades and small hand tools at its Maplewood, New Jersey and Little Ferry, New Jersey facilities, the only facilities involved herein. During the preceding 12 months, the Employer, in conducting its business operations, sold and shipped from its New Jersey locations goods valued in excess of $50,000 directly to customers located outside the State of New Jersey.
[4] The parties stipulated and I find that the Petitioner is a labor organization within the meaning of Section 2(5) of the Act.
[5] The record reveals that there is no history of collective bargaining for the Employer's employees in either Maplewood or Little Ferry, and no contract or other bars to an election in this matter.

5. The appropriate unit for the purpose of collective bargaining within the meaning of Section 9(b) of the Act is as follows:

All full-time and regular part-time production employees, maintenance employees, shipping and receiving employees, drivers and leads employed by the Employer at is Maplewood, New Jersey facility, excluding office clerical employees, temporary employees, professional employees, guards and supervisors, as defined in the Act.

I. STATEMENT OF FACTS

The Employer is engaged in the manufacture and sale of knives, blades and small hand tools from its Maplewood, New Jersey and Little Ferry, New Jersey facilities. The record reflects that the Little Ferry facility is about 23 miles from the Maplewood facility. Sean Quinn, the Employer's President and CEO, testified that the Employer intends to combine the operations being performed at both of those facilities into one operation in Kenilworth, New Jersey. The record does not reflect a specific date as to when the Employer will commence manufacturing at the Kenilworth location.

With respect to the managerial hierarchy of the Employer, as noted above, the record reflects that Sean Quinn is the President and CEO. He normally spends about three days a week at the Maplewood facility and two days a week at the Little Ferry facility. Reporting to him is a General Manager who spends almost all of his time in Maplewood, but goes to the Little Ferry facility about a couple of times a month. A Facility Manager in charge of the Little Ferry operation and a Plant Manager in charge of the Maplewood operation both report to the General Manager. At the Little Ferry facility, under the Facility Manager, are heat/stamping and packing/assembly lead operators and operators. At the Maplewood facility, working under the Plant Manager, are grinding, shelling, and packing/assembly lead operators and operators. Maintenance and repair employees and one driver also work at the Maplewood facility.

The record reflects that the manufacturing process begins in Little Ferry and ends in Maplewood. As soon as the Employer receives steel coil at Little Ferry, a stamping and perforation procedure is performed. Notches, holes and a blank resembling the final blade shape are stamped into the steel coil. Thereafter, the steel is also heat treated, or heated in an oven and cooled to attain the precise level of hardness. When this process is completed, the steel coils are transported to the Maplewood facility. In Maplewood, a grinding and honing process takes place. During this process, edges are ground onto the steel and then honed to optimal sharpness. The steel coil is then snapped along perforations into final blade form, and packaged, as required. A small amount of packaging work is also done in Little Ferry. The final products are all distributed from Maplewood.

The two facilities have shifts which run from 8:00 AM to 4:30 PM and from 4:00 PM to 1:00 AM, but the Little Ferry facility, unlike the Maplewood facility, also has a third shift, operating from 12:00 AM to 8:30 AM.

The Employer has a centralized order processing and invoicing department as well as a human resources department in Little Ferry. It also has one centralized customer service department in Maplewood. Further, there is one common payroll for both facilities.

Starting hourly pay rates are about the same for all employees, and employees earn the same shift differential at both facilities. Most of the employees earn within the range of $8 to $12 per hour, but some employees, such as machinists, earn as much as about $20 per hour. The record reflects that different job functions performed at the two facilities require different training. For example, a heater/stamper in Little Ferry would

not be able to perform the grinding or shelling duties completed in Maplewood without receiving specific training to perform those functions.

The record also reflects that employment benefits, such as vacations, sick leave and other paid time off, health insurance and participation in a 401(k) savings plan are the same at both facilities. Further, the same corporate policies and procedures apply to the employees at both facilities, and the employees share a common employee handbook.

With respect to employee interchange, the record reflects that two to three machinists in the maintenance and repair department, who normally work in Maplewood, have, at different times, gone to Little Ferry to perform some work there. The record does not reflect the circumstances or how frequently this has occurred, except for testimony from President Quinn regarding one machinist from Maplewood who has recently been working for about three weeks on a special project in Little Ferry. That project involved making new parts for a heat-treating oven that has been installed in Kenilworth, in expectation of the consolidation of operations, discussed below. Additionally, the Employer's one driver travels back and forth between the facilities on a daily basis. Quinn conceded, however, that other than the one driver and the few machinists, referred to above, the employees from one facility come into contact with employees from the other facility "very, very infrequently." (Tr. 55).

The record reflects that the Employer has designated a separate manager to be responsible for day-to-day supervision of the employees at each facility. In Maplewood, day-to-day supervision is the responsibility of the Plant Manager. In Little Ferry, the Employer has assigned this responsibility to the Facility Manager. The record reflects that the Facility Manager in Little Ferry and the Plant Manager in Maplewood interview and select employees to be hired who will work under them. While there are no formal

performance evaluations, the Facility Manager and Plant Manager also provide informal evaluations directly to the employees who report to them. Additionally, they also play a primary role in deciding when to discipline employees, although it appears that they will first discuss these matters with either the General Manager or Quinn.

With respect to the Employer's plans to consolidate its operations into a single facility in Kenilworth, New Jersey, the record reflects that the Maplewood facility is subject to a lease that expires on April 30, 2011. The Employer has been unable to find another party that would sublease that property, after it is vacated in anticipation of the consolidation, until the end of the lease period. The Little Ferry facility is also subject to a lease, which expires in 2013. However, the Little Ferry lease provides that the Employer has the right to terminate it by giving at least 90 days prior written notice of such termination to the property owner. The Employer gave notice on September 1, 2010, indicating that it would vacate the premises by December 1, 2010. However, because it was not able to move its operations to Kenilworth by that date, as it had anticipated, it has not vacated or ceased operations at either the Maplewood or Little Ferry facility.

The record also reflects that the Employer entered into a lease on June 9, 2010 to rent about one-third of a new facility in Kenilworth. The lease is for a duration of five years, and was to commence on September 1, 2010. The lease, however, also provided that, in the event that a temporary or permanent Certificate of Occupancy had not issued by September 1, 2010, the commencement date of the lease would be delayed until 30 days after such Certificate of Occupancy is issued.

On December 3, 2010, the Employer obtained a Temporary Certificate of Occupancy for the Kenilworth facility. Certain renovations have to be made before a

final Certificate of Occupancy can be issued. Since the lease has been signed, the landlord has made renovations and the Employer, as well, has made and is making renovations to the Kenilworth facility, in anticipation of the consolidation of the Employer's operations there.

The record reflects that, in anticipation of the consolidation, most of the necessary renovation work has already been completed. The space to be rented to the Employer has been separated from the rest of the facility and offices, locker rooms and rest rooms have been prepared. An ammonia tank necessary for production has also been installed, as has a concrete path. Piping, plumbing and electrical work for the heat-treating ovens now being used in Little Ferry are being prepared so that the ovens can be moved there. The record reflects that one heat-treating oven was moved to Kenilworth about a week before the hearing, and it is being set up. Electrical work necessary for the grinding operation, now being performed in Maplewood, is also being completed in Kenilworth so that the grinding machines can be moved there. Water lines, ammonia lines and gas lines have been installed, as have phone lines and internet cables. Much of the necessary work has been done by electricians, plumbers or general workers from Maplewood who have been sent, on occasion, to Kenilworth, to work there.

The Employer has not entered into any contract with a moving company to perform the move, but it has moved some of the equipment itself, by renting vehicles on a day-to-day basis. It anticipates completing the move in the same manner. The Employer also anticipates moving equipment such as heat treating ovens, piece by piece. After a particular piece of equipment is moved and set up, and the Employer is sure that it is running well and that it has all of the necessary material to operate, the Employer will shut down another piece of equipment and also move it over, following the same

procedure. Thus, the move will not be completed at one time. As noted above, one heat-treating oven has already been moved to Kenilworth. The Employer anticipated that the next oven would be moved, hopefully, within two weeks of the close of the hearing, but some plumbing has to be completed before that move can be accomplished.

The Employer anticipates that all of the renovations will be completed and that it will have moved all of its equipment to the new Kenilworth facility by sometime in January 2011, at which time it will be able to begin its consolidated operations there. No operations were being performed in Kenilworth as of the close of the hearing.

II. ANALYSIS

In determining an appropriate bargaining unit, the Board seeks to fulfill the objectives of ensuring employee self-determination, promoting freedom of choice in collective bargaining and advancing industrial peace and stability. It is well settled that the Act does not require that a unit for bargaining be the only appropriate unit or even the most appropriate unit. Rather, the Act requires only that the unit be *an* appropriate unit. *American Hosp. Ass'n. v. NLRB, 499 U.S. 606, 610* (1991); *P.J. Dick Contracting, Inc.,* 290 NLRB 150 (1998); *Morand Bros. Beverage,* 91 NLRB 409, 418 (1950), enfd. 190 F.2d 576 (7th Cir. 1951). The Board also has broad discretion in this area, reflecting Congress' recognition of the need for flexibility in shaping the bargaining unit. *Overnite Transportation Co.,* 322 NLRB 723 (1996). Thus, the Board's procedure for determining an appropriate unit under Section 9(b) is first to examine the petitioned-for unit. If that unit is appropriate, the inquiry ends. Generally, the Board attempts to select a unit that is the smallest appropriate unit encompassing petitioned-for employee classifications. *Bartlett Collins Co.,* 334 NLRB 484 (2001).

As noted above, the Petitioner has requested a unit composed of all full-time and regular part-time production, maintenance, shipping and receiving employees, drivers and leads employed by the Employer at is Maplewood, New Jersey facility. The Employer argues that the only appropriate unit is a unit that includes such classifications of employees employed by it at both its Maplewood and Little Ferry, New Jersey facilities. The unit sought by a petitioning labor organization is a relevant consideration in determining the scope of a bargaining unit, and a union is not required to seek representation in the most comprehensive grouping of employees unless an appropriate unit compatible to the unit requested does not exist. *Overnite Transportation Company,* 322 NLRB 732 (1996). Though an employer may seek a broader unit and that unit may be appropriate, it does not necessarily render the petitioner's unit inappropriate. *Overnite Transportation Company, supra.*

The Board has long held that a single location unit is presumptively appropriate for collective bargaining. *Dattco, Inc.*, 324 NLRB 323 (1997); *J&L Plate,* 310 NLRB 429 (1993); *Bowie Hall Trucking*, 290 NLRB 41 (1988). To overcome the presumption, the challenging party has to show "functional integration so substantial as to negate the separate identity of a single facility unit." *J&L Plate,* 310 NLRB 429 (1993); *Courier Dispatch Group, Inc.*, 311 NLRB 728 (1993). See also: *Hegins Corp.*, 255 NLRB 160 (1981); *Penn Color, Inc.*, 249 NLRB 1117 (1980); *Dixie Belle Mills*, 139 NLRB 629 (1962). The factors that the Board examines in making this determination include: past bargaining history; geographical location of the facilities in relation to each other; extent of interchange of employees; degree of centralized versus local control over daily operations and labor relations; similarities in wages, benefits and working conditions and the differences, if any, in the skills and functions of employees. *Marine Spill Response*

Corp., 348 NLRB 1282 (2006) (quoting *Budget Rent a Car Systems, Inc*, 337 NLRB 379 (2002)); *Clarion Health Partners, Inc.*, 344 NLRB 332 (2005); *Laboratory Corp. of America Holdings*, 341 NLRB 1079 (2004); *Trane, an Operating Unit of American Standard Companies,* 339 NLRB 866 (2003). These factors must be weighed in resolving the unit contentions of the parties. The heavy burden is on the party opposing a petitioned-for single facility unit to present evidence sufficient to overcome the presumption. *J&L Plate*, 310 NLRB at 429. Even if there are some factors supporting a multilocation unit, the appropriateness of such a unit does not establish the inappropriateness of a smaller unit. *McCoy Co.,* 151 NLRB 383, 384 (1965).

Based upon the record as a whole, and for the reasons described below, I find that the Employer has failed to present evidence sufficient to overcome the presumption in favor of a single-facility unit.

The record revealed no bargaining history at either of the Employer's facilities. With respect to the distance between the facilities, about 23 miles, while geographic separation is not necessarily conclusive, it is a strong indicator whether a single location unit is appropriate. *Dixie Belle Mills*, supra, *Van Lear Equipment*, Inc., 336 NLRB 1059 (2001). In *D & L Transportation*, 324 NLRB 160 (1997), the Board found a single location unit to be appropriate where the other locations were between 3 and 21 miles apart. Also in *New Britain Transportation*, 330 NLRB 397 (1999), the Board found that single units were appropriate when they were separated by as little as 6 to 12 miles.

With respect to interchange or contact between the employees in Maplewood and those in Little Ferry, the extent of such interchange or contact appears to be extremely limited. Thus, any such contact only appears to be with one driver who travels between the two facilities and with a small number of mechanics, who may, on occasion, have to

leave Maplewood to perform work in Little Ferry. It is well established that minimal employee interchange and lack of meaningful contact between employees at different facilities diminishes the significance of the functional integration and distance between the facilities. *J & L Plate*, 310 NLRB 429 (1993). The party opposing the single facility presumption has the burden of presenting sufficient evidence to rebut that presumption and must establish the context and percentage of interchange among the total number of employees. See, *New Britain Transportation,* 330 NLRB 397 (1999). In the instant matter, the Employer was unable to provide any evidence of significant employee interchange and consequently, it has not met its burden.

The record reveals evidence of centralized control of employment policies and procedures. Thus, the same corporate policies and procedures apply to all employees. However, there appears to be a significant degree of local autonomy over labor relations at the two facilities involved herein, each of which has its own on-site supervision. Thus, the record reflects that the Little Ferry facility has a Facility Manager and the Maplewood facility has a Plant Manager, both of whom play primary roles and have significant input into labor relations decisions pertaining to their facilities. The Board has found that the existence of centralized administration and control was not inconsistent with finding sufficient local autonomy to warrant a single location. *New Britain Transportation Co.,* 330 NLRB 397 (1999); *L'Eggs Products, Inc.,* 236 NLRB 354 (1978). Local autonomy of operations will militate toward a separate unit. *Renzetti's Market*, 238 NLRB 175 (1978), *Angelus Furniture Mfg. Co.,* 192 NLRB 992 (1971).

With respect to the similarities in wages, benefits and working conditions, the record reveals that the wages of the employees working in the two facilities are similar. Some employees, such as machinists, receive a higher rate of pay, apparently because of

their higher skill level. The record also reveals that all employees receive the same employment benefits, such as vacations, sick leave and other paid time off, health insurance and participation in a 401(k) savings plan. Employees at the two facilities also work the same hours on shifts one and two, but some employees in Little Ferry work on a third shift, which does not exist in Maplewood. The record reflects that the leads and operators, who are the majority of the employees working at each of the facilities, work on different types of machines and perform a different type of work than their counterparts at the Employer's other facility. These different types of operations require a different type of training.

Accordingly, I conclude that, based on the record as a whole, the employees working at the Employer's Maplewood facility have a group identity separate and apart from the larger group of the Employer's employees working in both Maplewood and Little Ferry. In that regard, I note the fact that the employees in Maplewood have supervision separate and distinct from those in Little Ferry and that there is minimal interchange or contact between the employees at the two facilities. For the most part, the Maplewood employees perform a different type of work than is performed by the employees in Little Ferry. I find that those factors outweigh the centralization of labor relations, and the commonality of wages and benefits, to the extent that such exists, and are significant factors establishing the appropriateness of a single facility unit. I do not find that there is functional integration so substantial as to require an overall unit of employees at the two facilities. The lack of geographic proximity between the facilities also militate against a finding that only a multi facility unit is appropriate. I also note that the Board has held that a union's position as to the unit is always a relevant consideration, albeit not a determinative one. *Mark's Oxygen Co.,* 147 NLRB 228 (1964);

Airco Inc., 273 NLRB 348 (1984). In this regard, noting that the Petitioner's desire as to the unit is consistent with the factual and legal analyses described above, and based upon the record as a whole, I find the Petitioner's proposed unit to be appropriate in scope.

There remains for consideration whether an election should be ordered, given the expected consolidation of the two facilities into a single facility in Kenilworth, New Jersey. The Board's longstanding policy is that it will not conduct an election where permanent changes to the scope and composition of an otherwise appropriate unit are imminent and certain. *Hughes Aircraft Company,* 308 NLRB 82 (1992) (permanent layoff); *Larson Plywood Company, Inc*, 223 NLRB 1161 (1976) (permanent layoff); *Massachusetts Electric Company*, 248 NLRB 155 (1980) (merger/consolidation of facilities). In the instant case, I acknowledge that, at an undetermined date in the future, a consolidation of operations will occur and as a result the Maplewood unit, as it is currently constituted, will cease to exist. However, I can not conclude that the consolidation of operations is clearly imminent. Several significant factors support this conclusion. First, I note that as of the close of the hearing, with the exception of one piece of equipment, the Employer had not moved any of its manufacturing equipment into the new Kenilworth facility. Second, none of the employees, either at Maplewood or at Little Ferry are reporting to the Kenilworth facility to perform any of their regular production or packaging duties. Third, I note that additional preparation of the new facility, including some plumbing work, must be completed before the Employer can commence the transfer of the operation. The record is silent as to when that work will be completed. Fourth, I note that the Employer's original plan to have moved into the Kenilworth building by December 1, 2010 was inaccurate, apparently because of unexpected delays in the preparation of that facility. Finally, I note that the record does

not reflect a specific date upon which the move will be completed. As it does not appear that the Maplewood unit will cease to exist until the consolidation of operations is completed, I cannot conclude that the cessation of existence of the Maplewood unit is imminent. Given these circumstances and the uncertainty as to when the consolidation will actually occur, I am reluctant to deny employees in Maplewood their right to vote on whether they desire to be represented by a labor organization. Accordingly, I find that there is an insufficient basis on which to dismiss the petition and shall direct an election in the petitioned-for unit.

III. DIRECTION OF ELECTION

An election by secret ballot shall be conducted by the undersigned in the unit found appropriate at the time and place set forth in the notice of election to be issued subsequently. Eligible to vote in the election are those in the unit who were employed during the payroll period ending immediately before the date of this Decision, including employees who did not work during that period because they were ill, on vacation or temporarily laid off. Employees engaged in an economic strike who have retained their status as strikers and have not been permanently replaced are also eligible to vote. In addition, in an economic strike that commenced less than 12 months before the election date, employees engaged in such strike that have retained their status as strikers but who have been permanently replaced, as well as their replacements, are eligible to vote. Unit employees in the military services of the United States may vote if they appear in person at the polls. Ineligible to vote are (1) employees who have quit or been discharged for cause since the designated payroll period; (2) striking employees who have been discharged for cause since the strike began and who have not been rehired or reinstated before the election date; and (3) employees who are engaged in an economic strike that

began more than 12 months before the election date and who have been permanently replaced. Those eligible to vote shall vote whether or not they desire to be represented for collective bargaining purposes by **Local 108, Retail, Wholesale and Department Store Union a/w United Food and Commercial Workers.**

IV. LIST OF VOTERS

In order to ensure that all eligible voters may have the opportunity to be informed of the issues in the exercise of their statutory right to vote, all parties in the election should have access to a list of voters and their addresses, which may be used to communicate with them. *Excelsior Underwear, Inc.,* 156 NLRB 1236 (1966); *NLRB v. Wyman-Gordon Company*, 394 U.S. 759 (1969). Accordingly, it is hereby directed that within seven (7) days of the date of this Decision, two (2) copies of an election eligibility list containing the full names and addresses of all the eligible voters in the unit found appropriate above shall be filed by the Employer with the undersigned, who shall make the list available to all parties to the election. *North Macon Health Care Facility,* 315 NLRB 359 (1994). In order to be timely filed, such list must be received in NLRB Region 22, 20 Washington Place, Fifth Floor, Newark, New Jersey 07102, on or before **January 6, 2011**. No extension of time to file this list shall be granted except in extraordinary circumstances nor shall the filing of a request for review operate to stay the requirement here imposed.

V. RIGHT TO REQUEST REVIEW

Under the provisions of Section 102.67 of the Board's Rules and Regulations, a request for review of this Decision may be filed with the National Labor Relations Board, addressed to the Executive Secretary, 1099 14th Street, N.W., Washington, D.C. 20570-0001. The Board in Washington must receive this request by **January 13, 2011**. The

request may be filed electronically through E-Gov on the agency's website, www.nlrb.gov, but may not be filed by facsimile[6].

Signed at Newark, New Jersey this 30th day of December, 2010.

J. Michael Lightner, Regional Director
National Labor Relations Board
Region 22
20 Washington Place – 5th Floor
Newark, New Jersey 07102

[6] To file the request for review electronically, go to www.nlrb.gov and select the E-Gov tab. Then click on the E-Filing link on the menu and follow the detailed instructions. Guidance for E-filing is contained in the attachment supplied with the Regional Office's initial correspondence on this matter and is also located under "E-Gov" on the Agency's website, www.nlrb.gov.